In the present case, the first and second plaintiffs have legitimate children, in addition to adopted children, (the 3rd, 5th and 7th plaintiffs); so that there is no reason why this Court should seek to extend the primary meaning of "family" to children other than lawful children.

As was stated by McElwaine, C.J. in the recent case of *re Tan Cheng Siong (deceased)*; *Dunman* v. *Tan Seng Hwee and another*, 6 Malayan Law Journal 87, "When construing an English will in an English colony where adoption is no part of its law Common or Statute I think the word (child) should not be taken as including an adopted child unless the will indicates that such is intended."

It has been stated in the affidavit of Cheok Chin Seng (the second plaintiff) sworn the 20th February 1937, that the 3rd infant plaintiff is his adopted son and is part of his family; and since his adoption, was always recognized by the Testatrix as his son, and as part of his family, and was always treated by the Testatrix as such. Further, that the 3rd infant plaintiff has always been recognized by the 1st defendant as his (Cheok Chin Seng's) son; and that the 5th and 7th plaintiffs are similarly part of the family of the 1st plaintiff.

These statements are not denied by the second and third defendants, but cannot affect the construction of the will.

I can find nothing in the context of the will to entitle me to hold that it was the intention of the Testatrix to include adopted children under the word "families." On the contrary, where an adopted child is mentioned, he is either so described; e.g. in appointing Cheok Chin Soon as trustee, she described him as "the adopted son of my said husband" or, as in Clause 7, she specifically mentioned him by name.

In view of the numerous authorities cited as to the meaning of the word "family," and since adoption is no part of the law of the Colony, I have no alternative but to hold that on the strict construction of the will, the third, fifth and seventh plaintiffs are not beneficiaries under the will of the Testatrix.

It is ordered that for the purpose of this summons, the first plaintiff shall represent the third (infant) plaintiff.

Order accordingly

Solicitors for the Applicants.—*Drew & Napier.*

Solicitors for the 1st Defendant—*Aitken & Ong Sing.*

Solicitor for the Respondent—*Mark Morrison.*

END OF STRAITS SETTLEMENTS OFFICIAL REPORTS.

JOHORE REPORTS.

[APPELLATE CRIMINAL JURISDICTION]

LAVILLE, Ag. J.

June 2, 1937.

S. SWAM PILLAY v. PUBLIC PROSECUTOR of JOHORE.

[JOHORE BAHRU CRIMINAL APPEAL No. 9 of 1937]

Criminal law—assault—police investigation—statements taken—material evidence not called at trial—charge not maintainable—carrying arms in public places—Penal Code, s.352; Enactment 6 (Small Offences) s.36.

In a privately conducted prosecution for assault under section 352 of the Penal Code a police investigation was held and statements taken from two persons who were present on the scene of the alleged offence, but their evidence was not called at the trial. The prosecution rested solely on the complainant's evidence and on the evidence of a witness not produced to the police,

Held, that the conviction could not stand in the absence of corroboration by the material witnesses whose evidence should have been but was not called. The witness who was called must be regarded with suspicion and his evidence disregarded.

The accused who held a license for a revolver was charged with going armed in a public thoroughfare an offence punishable under section 36 of the Small Offences Enactment. It was not denied that he carried a fully loaded revolver and went to a coffee shop where he was alleged to have pointed the weapon at the complainant. The accused was convicted and ordered to pay a fine of $5/-.

Held, on appeal to the Judge, upholding the conviction, that an offence is committed under section 36 of the Small Offences Enactment irrespective of whether the accused was found carrying the revolver on the five foot way which is a public thoroughfare or in a coffee shop which is a public resort.

Semble, the license to carry the weapon was no defence in that the weapon was unnecessarily loaded and possibly was being unnecessarily carried.

The appellate judge enhanced the sentence on this charge to a fine of $30/-, or in default 14 days' rigorous imprisonment.

MAGISTRATE'S CRIMINAL APPEAL.

Walters (*Mitter* with him), for the Appellant.

Moore, Public Prosecutor in person.

Cur. Ad. Vult.

LAVILLE, J.—This is an appeal against a conviction by Inche Esa bin Ahmad, 2nd Magistrate, Kluang, for assault under sec.352 and for going armed in a public thoroughfare under sec.36 Enact. 6 (Small Offences).

The evidence of complainant is that accused pointed a revolver at him in a coffee shop at Jalan Mengkibol, Kluang, on 18.11.36, whereupon he rushed out and complained to P.C.891 Abdul Manap. The latter came to the coffee shop and took accused away to the Police Station where accused handed over a revolver loaded.

The accused's defence is a denial of pointing the revolver at all, but he admits being in possession of it on that day and carrying it on his person. The revolver was properly licensed. Com-

plainant s story is spoken to by one Pakir Mohamed who says he was in the shop and saw accused putting his revolver into his pocket.

P. C. Abdul Manap's evidence is that complainant told him accused wanted to snoot nim and that accused had a pistol: he Abdul Manap went to the coffee shop and asked accused if he had a pistol: accused admitted it and was taken to the police station. It seems a report was made but it was not tendered in evidence by prosecution or defence: it is clear a police investigation was held and statements taken from persons there i.e. Omar, and the Chinese owner of the coffee shop and Abdul Manap. Neither Omar nor the coffee shop owner was called by the police.

The accused in defence admits ownership of the revolver states it was licensed and that he had it with him as he had $50 on his person and was going to a distant place. He denies that he aimed at or tried to snoot complainant. He calls no witnesses.

As to the charge of assault by pointing the weapon in a threatening way at complainant it is I think enough to say that it rests solely on the evidence of complainant in Court. In his statement to Abdul Manap it seems he said accused threatened to shoot him, not that he pointed a revolver at him. Pakir Mohamed merely says he saw accused putting a revolver away in his waist. It must be inferred that neither Omar nor the proprietor of the shop were able to support the story of pointing the revolver or the utterance of a threat as their evidence was not called though their statements were taken.

The evidence of Pakir Mohamed must be regarded with suspicion. He was discovered by the complainment as a witness on 31.1.37: instead of taking him off at once to the police to have a statement recorded and what he could say checked by the police he takes him to the lawyer's clerk on the evening before the trial only.

In view of the above it is unsafe to hold that the complainant s evidence as to the pointing should be accepted solely on his own word and the benefit of the doubt should be given to accused.

It may be noted *en passant* that Ex. D. should never have been admitted in evidence of as it is a statement reduced to writing in a police enquiry: the evidence of Ibrahim bin Hitam as to what Omar told him in a police enquiry should also not have been admitted, it being pure hearsay.

I allow the appeal and quash the conviction and sentance in regard to the charge of assault. As to the charge of going armed in a public thoroughfare it is argued for the appellant that if the story of the complainant is true the event took place inside a coffee shop and therefore the charge cannot lie and that even if the charge of going armed in place of public resort is substituted, there is no evidence that a coffee shop is such a place or that the accused was going armed there in that he was sitting down. I cannot give any weight to the last part of the argument: it would involve a finding that as long as a person sat down in a public road or place of resort armed he was not committing an offence. In my view going armed in a public place means merely bearing arms therein. There is no doubt that the accused was bearing arms. I have no doubt also that the Court should hold as a matter of common knowledge that a coffee shop is a place of public resort: any person is entitled to go into it and there is evidence that it was crowded with Chinese. In my view it is immaterial whether accused was found carrying the revolver on the 5 ft. way of the shop which is a public thoroughfare or inside the shop which is a place of public resort. In either case he was undoubtedly committing a breach of Sec. 36 of Enactment 6. I however incline to believe the evidence of P. C. Manap that accused was found on the 5 ft. way.

I affirm the conviction under sec. 36 of Enactment 6.

The accused gives as his reason for carrying the weapon that he was going to a distant place: he does not say where or whether it was a place in which a revolver was likely to be necessary as a safeguard. $50 is not such a sum of money as would normally in any place cause the presumption that arms were necessary for its safety.

It is just this habit of carrying arms unnecessarily that leads to sudden crime and in my view the fine inflicted on accused is inadequate to the offence. I enhance the sentence to a fine of $30, in default 14 days rigorous imprisonment.

Appeal dismissed.
Conviction affirmed.
Sentence enhanced.